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National Parks Conservation
Association and Local Counsel for
Plaintiff Northern Cheyenne Tribe*

*Counsel for Plaintiff Northern
Cheyenne Tribe*

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

CROW INDIAN TRIBE, et al.,

Plaintiffs,

v.

UNITED STATES OF AMERICA,
et al.,

Federal Defendants,

and

STATE OF WYOMING, et al.

Defendant-Intervenors.

)
) Case No. CV 17-89-M-DLC
)
) (consolidated with Case Nos.
) CV 17-117-M-DLC,
) CV 17-118-M-DLC,
) CV 17-119-M-DLC, and
) CV 17-123-M-DLC)
)
) **DECLARATION OF TIMOTHY**
) **J. PRESO IN SUPPORT OF**
) **MOTION OF PLAINTIFFS**
) **NORTHERN CHEYENNE**
) **TRIBE, ET AL. FOR AN**
) **AWARD OF ATTORNEYS'**
) **FEES AND COSTS**
)

I, Timothy J. Preso, declare as follows:

1. I am lead counsel for the Plaintiffs Sierra Club, Center for Biological Diversity, and National Parks Conservation Association in this case. I also serve as local counsel for the Plaintiff Northern Cheyenne Tribe in the District Court proceedings in the District of Montana. I am submitting this declaration in support of Plaintiffs' motion for an award of attorneys' fees and costs.

2. I have contacted each of the Plaintiffs regarding their satisfaction of the eligibility requirements for an award of fees under the Equal Access to Justice Act ("EAJA"). The Center for Biological Diversity and National Parks Conservation Association meet EAJA's eligibility requirements because they were exempt from taxation under § 501(c)(3) of the Internal Revenue Code and had fewer than 500 employees at the time the complaint in this case was filed.

3. The Sierra Club does not meet EAJA's eligibility requirements. However, this litigation would have been pursued by the EAJA-eligible Plaintiffs without the participation of Sierra Club.

4. The Northern Cheyenne Tribe also may not meet EAJA's eligibility requirements. However, the Tribe was separately represented in this case by attorneys from the Ziontz Chestnut firm. Earthjustice counsel coordinated with the Ziontz Chestnut lawyers and received helpful assistance and feedback from them

regarding briefing and strategy decisions. Plaintiffs do not seek to recover fees for the Ziontz Chestnut attorneys' time under EAJA.

5. Earthjustice attorneys maintain contemporaneous records of the time they devote to various matters. Attached as Exhibit 1 is a true and correct copy of an itemized statement of the Earthjustice attorney time expended by Plaintiffs' counsel in this matter. In compiling this statement of attorney time, I exercised billing judgment to eliminate redundant or unnecessary time entries, time spent on media outreach and case intake procedures, and time spent exclusively on addressing litigation advocacy by intervenors who supported the Federal Defendants. Further, for purposes of settlement only, I eliminated time entries associated with preparation of Plaintiffs' claim for attorneys' fees and costs.

6. Each of the Earthjustice attorneys who worked on this matter has distinctive expertise in environmental law and litigation that is not widely available. I graduated summa cum laude from Georgetown University Law Center in Washington, D.C. in 1994. After clerking for the Hon. Harry T. Edwards of the U.S. Court of Appeals for the District of Columbia Circuit, I worked for nearly five years at the Washington, D.C. law firm of Miller, Cassidy, Larroca & Lewin, L.L.P. During that time, I began my specialized environmental practice by successfully litigating an Endangered Species Act case, Gibbs v. Babbitt, 31 F. Supp. 2d 531 (E.D.N.C. 1998), aff'd, 214 F.3d 483 (4th Cir. 2000). In March

2000, I became a staff attorney in Earthjustice's Northern Rockies office, located in Bozeman, Montana. In 2012, I became the managing attorney of that office. Earthjustice's entire practice consists of public-interest environmental cases of local, regional, and national significance. During my 20 years of practice as an Earthjustice attorney, I have served as lead counsel in numerous cases under federal environmental statutes, including the Endangered Species Act. I have also been an invited speaker on issues of environmental law at numerous continuing legal education programs and seminars. In addition, I have co-taught an undergraduate natural resources law and policy class at Montana State University for three semesters during this period.

7. My Earthjustice colleagues who also worked on this case—Joshua Purtle, Jenny Harbine, and Katherine O'Brien—were all similarly dedicated to the practice of public-interest environmental litigation during the years preceding and involving this case. Mr. Purtle provided the bulk of assistance to me on this case. Mr. Purtle graduated cum laude from Harvard Law School in 2013 and then clerked for the Hon. Joel Bolger of the Alaska Supreme Court from 2013 to 2014. Mr. Purtle then worked as the Koob Litigation Fellow at the Natural Resources Defense Council from 2014 to 2016, when he took an associate attorney position in the Northern Rockies office of Earthjustice. Mr. Purtle performed numerous research and document-review tasks in this case as well as initial drafting of

portions or the entirety of motions and briefs. Mr. Purtle and I generally divided issues for initial drafting to maximize efficiencies and eliminate redundancies.

8. Jenny Harbine, a staff attorney in the Northern Rockies office of Earthjustice, providing valuable contributions to this case by reviewing draft briefs, consulting on strategic decisions, and participating in moot courts preceding key oral arguments. Ms. Harbine graduated from law school at the University of California at Berkeley in 2003. Ms. Harbine then worked for the law firm of Shute, Mihaly & Weinberger, L.L.P., for three years before joining Earthjustice in 2006. During her work at Earthjustice, Ms. Harbine has gained substantial experience with litigation under the Endangered Species Act and served as lead counsel in litigation to enforce this Act.

9. Katherine O'Brien, also a staff attorney in the Northern Rockies office of Earthjustice, reviewed draft briefs and assisted with preparations for oral argument. In addition, Ms. O'Brien substituted for me as lead counsel presenting argument for all Plaintiffs at a March 13, 2018 hearing in this case regarding the Federal Defendants' motion to stay the District Court proceedings. I was unable to attend that hearing because I had a conflicting obligation to present oral argument on the merits of another case, Solenex, L.L.C. v. Zinke, No. 1:13-cv-00993-RJL, on March 14, 2018 in the federal district court in Washington, D.C. Ms. O'Brien graduated in 2012 from the University of Washington Law School, where she was

editor in chief of the law review, and then clerked for the Hon. Sidney Thomas of the Ninth Circuit Court of Appeals before joining Earthjustice in 2013. Since joining Earthjustice, Ms. O'Brien has litigated, either as lead or co-counsel, numerous matters under the Endangered Species Act.

10. All of these Earthjustice counsel are recognized experts in environmental litigation. Because of the specialized expertise that I and these other counsel bring to this litigation, we seek enhanced reimbursement for our time spent on this case. If necessary, we will file further evidence attesting that these rates reflect the prevailing market rates for attorneys with equivalent experience in the District of Montana.

11. We also seek to recover our costs and expenses for the litigation that occurred in this case in the District of Montana. Attached as Exhibit 2 is a true and correct copy of an itemized statement of litigation costs and expenses incurred by Plaintiffs in this matter. These costs and expenses reflect those that would ordinarily be billed to a client in litigation.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed on September 14, 2020 in Bozeman, Montana.

/s/Timothy J. Preso

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was today served via the Court's CM/ECF system on all counsel of record.

/s/ Timothy J. Preso
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